UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/714,751	11/17/2003	Jason G. Lang	117P1846US01	3348

7590 08/21/2007

IPLM Group, P.A.
Post Office Box 18455
Minneapolis, MN 55418

EXAMINER
ROWAN, KURT C

ART UNIT	PAPER NUMBER
3643	

MAIL DATE	DELIVERY MODE
08/21/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/714,751
Filing Date: November 17, 2003
Appellant(s): LANG ET AL.

MAILED

AUG 21 2007

GROUP 3600

Robin Sannes
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed August 29, 2006 appealing from the Office action mailed Feb. 14, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6016623	CELESTINE	1/2000
4138796	SOUZA	2/1979

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1, 2, 4, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Celestine in view of Souza (US 4,138,796).

3. The patent to Celestine shows a rodent trap having a wall portion 15, a floor portion 16, a front portion 12, a top portion 11, and sides configured to define a cavity such as the interior of the housing above floor 16 and below door 30 and bottom wall 16 in extension 17 as shown in Fig. 1-3. The cavity is between the wall portion and the front portion. Celestine shows a trap assembly 30 providing access to the cavity. Celestine shows a removable insert receptacle 40 arranged to be housed within the cavity and proximate to the trap assembly. Celestine shows the removable insert receptacle is configured and arranged to contain a rodent within the cavity. The area of Celestine is also a cavity 15 surrounded by walls 12, 13, 14 above the floor 16 and roof 11. Celestine inherently makes the removable insert receptacle from a non-destructive

material to thereby prevent the escape of the rodent. An upper portion of the cavity can contain an animal but the animal can leave at any time. The lower portion of the cavity which holds the removable insert prevents the animal from leaving once the animal drops through the trap door.

The patent to Souza shows a rodent trap that conceptually works on the same concept as the present invention but the two units are adjacent to each other rather than the removable insert unit being located within the cavity. Souza shows an area of confinement having two doors 32 to form an area of confinement in which the rodent is trapped to prevent escape. When the door 36 to the removable insert receptacle 14 opens, the two doors 32 in the area of confinement close so that the rodent can move to the receptacle. In reference to claim 1, it would have been obvious to provide the trap of Celestine with a door movement operation as shown by Souza so that when the door 30 to the removable insert 40 opens, the door 18 to the trap assembly closes for the purpose of preventing escape of the rodent by jumping back through the open door 18. Then after the trap door 30 of Celestine closes, the door 18 can reopen to start the cycle over. In reference to claims 2, 22, Celestine does not disclose that the removable insert receptacle is made from metal, but it would have been obvious to make it from metal. See In re Leshin, 125 USPQ 416 which states that the selection of a known material is based on its suitability for the intended use. In refernce to claims 4, 16, 29, 37, Celestine shows a climbing assist member 18, but it would have been obvious to employ more than one for multiplied effect. See In re Harza, 124 USPQ 378. Celestine does not show the climbing assist member being positioned between the wall

portion and the front portion and between the floor portion and the top portion and between the sides and being enclosed there between. However, Celestine does show a climbing assist member as a friction surface 18 on ramp 14. At any rate it would have been obvious to employ a climbing assist member or members anywhere in the interior of the trap where it is deemed desirable. See In re Japikse, 86 USPQ 70 which states that the rearrangement of the location of parts is obvious. Applicant should recite the structure of the climbing assist members and the trap in more detail. In reference to claims 5, 11, Celestine does not disclose a maintenance card within the cavity, but it would have been obvious to employ one to determine when the trap was last serviced. In reference to claims 6, 9, Celestine does not disclose that the front portion of the trap looks like a vent, but it would have been obvious to disguise the trap as is well known in the art for the purpose of keeping people away from it.

4. Claims 3, 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Celestine in view of Souza as applied to claim 1 above, and further in view of Denny et al.

The patents to Celestine and Denny show rodent traps. Celestine has been discussed above and does not disclose a glue board. The patent to Denny shows a trap 20 having a glue board 86,88. In reference to claim 3, it would have been obvious to provide Celestine with a glue board as shown by Denny to retain the rodents in the removable insert receptacle.

5. Applicant argues that Celestine, in reference to claims 1, 12, 18, 29, 43, does not show that the cavity can contain a rodent because the rodent could escape from the cavity through the swinging front wall. However, the claim states that the cavity is configured and arranged to contain a rodent, which does not preclude the rodent from leaving. The claim just requires that the cavity can hold a rodent. Applicant has amended the claims to recite that the trap assembly contains a wall portion, a floor portion, a front portion, a top portion, and the sides and the trap assembly are configured and arranged to prevent the escape of the rodent from the cavity. Celestine shows the cavity (an extension of insertion opening 18) under trap door 30 for containing the rodent but also precludes the rodent from exiting. All the other recited elements such as the wall portion the floor portion, the front portion, the top portion, the sides also are configured and arranged to prevent the escape of the rodent from the cavity. Applicant further argues that the present invention contains and prevents escape of the rodent without an insert receptacle and that Celestine requires rodent box 40 to be present to contain and prevent the escape of the rodent. However, this distinction is a functional limitation which would be more properly presented in a method

of trapping claim. Celestine does not contemplate using the trap without the rodent box and shows the same structure recited. Applicant should recite the structural differences and the relationship between them that perform this function. Celestine shows a trap assembly that provides access to the cavity by the rodent and prevents the rodent from exiting the cavity. In reference to claims 12, 18, Celestine shows the interior 15 exposed by the swinging from wall 14 and the insertion opening 18 do not allow for the rodent to be contained therein. However, the rodent is contained in box 40 which is contained in the interior 15. The door 30 provides access to the cavity and acts as part of a trap assembly. Also, the trap assembly of Celestine helps to prevent contaminants from entering the cavity through the elevated trap assembly due to the infrared sensor and the ramp 14. The elevated trap assembly of Celestine also provides the only entrance into the cavity. In response to applicant's argument that there is no suggestion to modify the reference into having the appearance of a vent as recited in claims 6, 9, 23, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the knowledge is generally available to one of ordinary skill in the art by merely attaching the back wall 13 to the side wall of a building and changing the appearance of the trap to resemble a vent. See In re Dailey et. al., 149 USPQ 47. This would not render the trap

unsatisfactory for its intended purpose or even change the principle of operation of the trap. This would permit the rodent box to be removed from the trap from the insertion opening. Hence, making Celestine resemble a vent is possible without completely redesigning the trap and would involve only routine skill in the art.

(10) Response to Argument

Applicant argues in reference to Celestine that the unit is not designed to be used without the removable insert. This is correct. Applicant argues on page 32, in the reference to Souza, that it is not until the units are separated that he holding unit contains an animal and forms a confinement in which the animal is trapped to prevent the escape of the animal. However, this is not correct since once the doors 32, 34 of Souza are closed, the animal is trapped. The animal can be in compartment 18 or 14. Souza desires the animals to go into the holding unit 14 and uses a flashing light to induce the animal to go into the holding unit and once that occurs, door 58 closes to retain the animal in the holding unit and doors 32, 34 open. The units do not have to be separated, in fact, the units should be connected to operate correctly. After door 58 is closed, the units can be separated to dispose of the animal in the holding unit. It should be pointed out that when doors 32, 34 are closed, exit opening is open, but the animals are still trapped since going through the exit opening results in the animal being in the holding unit. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be

established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the knowledge is generally available to one of ordinary skill in the art. The proposed combination does not result in the trap of Celestine being used without the removable insert, but closing off the upper section of the trap in the same fashion that Souza closes the open doors 32, 34 to the housing unit 18. Applicant argues the functions of the removable insert of the present invention are different that of the insert of Celestine, in reality the functions are the same. Combining Celestine and Souza, forms an area of confinement in which the rodent or animal is trapped and prevented from escape. Nothing in the combination of references precludes Celestine and Souza from using the removable insert receptacle. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e. that the removable insert receptacle of the claimed invention is not required to contain the rodent.) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Kurt Rowan

KURT ROWAN
PRIMARY EXAMINER
GROUP 3200

Conferees:

Jeff Gellner

Frank Palo